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**FILED**

**APR 05 2006**

RICHARD W. WIEKING  
CLERK, U.S. DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA  
SAN JOSE

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10 IN THE UNITED STATES DISTRICT COURT  
11 FOR THE NORTHERN DISTRICT OF CALIFORNIA  
12 SAN JOSE DIVISION

13 **RICK J. WILSON,**

Petitioner,

15 v.

16 **MIKE KNOWLES, Warden,**

17 Respondent.

C 04-2858 JW

**ANSWER TO ORDER TO SHOW  
CAUSE**

19 Respondent hereby provides this answer to the Order to Show Cause why the petition for  
20 writ of habeas corpus should not be granted.

21 **I.**

22 **CUSTODY**

23 Petitioner is lawfully in the custody of the California Department of Corrections as the  
24 result of a judgment of conviction by a Santa Clara County jury of felony driving under the influence  
25 with a prior conviction. The trial court found that petitioner had sustained two prior "strike"  
26 convictions, and sentenced him to 25 years to life in prison.

27 **II.**

28 **VERIFICATION**

1 The petition is signed and verified by petitioner.

2 **III.**

3 **PROCEDURAL ISSUES**

4 The claims in the petition are exhausted. The petition is timely within the meaning of 28  
5 U.S.C. § 2244(d).

6 **IV.**

7 **GENERAL AND SPECIFIC DENIALS**

8 Respondent denies that the state court's ruling was based on an unreasonable  
9 determination of fact or was contrary to or involved an unreasonable application of clearly  
10 established United States Supreme Court law. Respondent specifically denies that (1) he was denied  
11 due process by the procedure used to determine whether his prior conviction qualified as a strike;  
12 (2) the trial court's determination that petitioner's prior conviction qualified as a strike violated  
13 *Apprendi v. New Jersey*, 530 U.S. 466 (2000), because it was not made by a jury on a standard of  
14 proof beyond a reasonable doubt; and (3) petitioner's sentence was cruel and unusual in violation  
15 of the Eighth Amendment.

16 **V.**

17 **LODGED DOCUMENTS**

18 Respondent has lodged concurrently with the answer the following exhibits: (1) Clerk's  
19 Transcript (1 volume); (2) Augmented Clerk's Transcript (1 volume); (3) Reporter's Transcript (4  
20 volumes); (4) Augmented Reporter's Transcript (1 volume); (5) Appellant's Opening Brief; (6)  
21 Respondent's Brief; (7) Reply Brief; (8) Opinion by California Court of Appeal; (9) Petition for  
22 Review; (10) Order denying review by California Supreme Court.

23 **VI.**

24 **INCORPORATION BY REFERENCE**

25 Respondent hereby incorporates by reference the accompanying memorandum of points  
26 and authorities in support of this answer.

27 ///

28 ///

VII.

CONCLUSION

Respondent respectfully requests that the petition for writ of habeas corpus be denied.

Dated: April 4, 2006

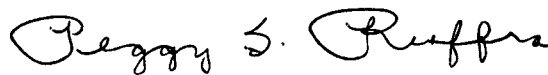
Respectfully submitted,

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**DECLARATION OF SERVICE BY U.S. MAIL**

Case Name: **Rick J. Wilson v. Mike Knowles;** No.: **C 04-2858 JW (PR)**

I declare:

I am employed in the Office of the Attorney General, which is the office of a member of the California State Bar, at which member's direction this service is made. I am 18 years of age and older and not a party to this matter. I am familiar with the business practice at the Office of the Attorney General for collection and processing of correspondence for mailing with the United States Postal Service. In accordance with that practice, correspondence placed in the internal mail collection system at the Office of the Attorney General is deposited with the United States Postal Service that same day in the ordinary course of business.

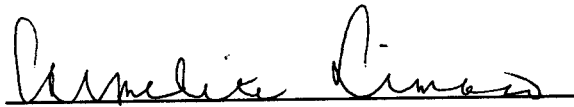
On April 4, 2006, I served the attached **ANSWER TO ORDER TO SHOW CAUSE; MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT OF ANSWER; NOTICE OF LODGED EXHIBITS** by placing a true copy thereof enclosed in a sealed envelope with postage thereon fully prepaid, in the internal mail collection system at the Office of the Attorney General at 455 Golden Gate Avenue, Suite 11000, San Francisco, CA 94102-7004, addressed as follows:

Rick J. Wilson  
P-76656  
Folsom State Prison  
300 Prison Road  
P.O. Box 71  
Represa, CA 95378-0004

I declare under penalty of perjury under the laws of the State of California the foregoing is true and correct and that this declaration was executed on April 4, 2006, at San Francisco, California.

Carmelita F. Limaco

Declarant

  
Signature